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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/829,151	04/09/2001	Alan Young	47185-95330	8242

7590 10/29/2004

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EXAMINER

NGUYEN, TAN D

ART UNIT	PAPER NUMBER
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3629

DATE MAILED: 10/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/829,151

Applicant(s)

YOUNG, ALAN

Examiner

Tan Dean D. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7,9 and 10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7,9 and 10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Response to Amendment

The amendment filed 6/21/2004 have been entered.

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. **Claims 1-7 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

In order for the claimed invention to be statutory subject matter, the claimed invention must fall within one of the statutory classes of invention as set forth in § 101 (i.e. a process, machine, manufacture, or composition of matter).

In the present case, Method claim 1 is directed to a "method for reporting a key performance indicator", which is not within one of the classes of invention set forth in § 101.

The "method for reporting a key performance indicator" comprising the steps of:

- (a) identifying a key performance indicator (KPI),
- (b) indentifying at least one business event associated with the (KPI)
- (c) receiving a business event message ...,
- (d) determine the value of the (KPI) based on the business data, and
- (e) displaying the determined value of the (KPI) via a contextual visulization interface",

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are merely an abstract idea and do not produce a useful, tangible, concrete results.

The “method for reporting a (KPI)” comprising the steps of (a)-(e) as shown are:

1) merely an abstract idea and

2) does not reduce to a practical application in the technological arts and are therefore are found to be non-statutory.

See *In re Alappat*, 33 F.3d at 1544, 31 USPQ2d at 1557, or *In re Waldbaum*, 173 USPQ 430 (CCPA 1972) or *In re Musgrave*, 167 USPQ 280 (CCPA 1970) and *In re Johnston*, 183 USPQ 172.

Claim Rejections - 35 USC § 112

3. Claims 1-7, 9, and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, the preamble calls for “a method for reporting a key performance indicator (KPI), with the 1st step of “identifying a KPI”. It appears that the scope of the claim can be achieved with the 1st step of identifying a (KPI) and then (2nd) reporting the same (KPI). It’s not clear what are the purpose of the remaining steps (b)-(e) to the preamble which merely calls for “reporting a (KPI)”. From the last 2 steps, which calls for determine the value of the (KPI) and then displaying the value of the (KPI), it appears that the scope of the claim is more than just reporting a (KPI) but analyzing and displaying business value of some business event. Correction is required because it’s

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not clear what is the scope of the claimed and how the steps are carried out the meet the scope of the claimed invention.

Independent Claims 9 and 10 are rejected for the same reasons set forth in claim 1 above.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 9, 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over CALVER (US 2001/0032092).**

As for System claim 9, CALVER fairly teaches a system for monitoring and improving business performance comprising:

A workflow manager operative to receive business data, determine their value and reporting back to the user with answers or solutions for their business issues, and

A contextual visualization (user graphical interface) in communication with the manager to display value (see Figs. 2, 3, 4, 6, 13, 15, 16). On [0070-0076], CALVER discloses that the system can be used for any type of industry-oriented format, business problem or issue or event, etc., therefore, it would have been to modify the teachings of CALVER to include current business indicator and related events as shown in claim 9.

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6. **As for Apparatus claim 10**, CALVER fairly discloses an apparatus for monitoring and improving business performance comprising:

a processor (see Fig. 2, (31, 51));

a memory connected to the processor storing a program to control the operation of the processor (see Fig. 2 (31, 34, 36, 50));

the processor operative with the program in the memory to receive business data, determine their value and reporting back to the user with answers or solutions for their business issues, and

A contextual visualization (user graphical interface) in communication with the manager to display value (see Figs. 2, 3, 4, 6, 13, 15, 16). On [0070-0076], CALVER discloses that the system can be used for any type of industry-oriented format, business problem or issue or event, etc., therefore, it would have been to modify the teachings of CALVER to include current business indicator and related events as shown in claim 10.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

1. US Patent 6,289,380 discloses network management system using virtual reality techniques to display and simulate navigation to network components.

2. US Patent 2003/0088663 discloses method and apparatus for predictively and graphically administering a network system in a time dimension.

3. Article "Influence ...Rural Sweeden" is cited to teach some relationship between performance indicator and business event.

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8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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5. Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, should be directed to the group clerical personnel and not to the examiner. As the official records and applications are located in the clerical section of the examining Tech Center, the clerical personnel can readily provide status information without contacting the examiner. See MPEP 203.08. The Tech Center clerical receptionist number is (703) 308-1113
Or <http://pair-direct@uspto.gov>.

In receiving an Office Action, it becomes apparent that certain documents are missing, e. g. copies of references, Forms PTO 1449, PTO-892, etc., requests for copies should be directed to Tech Center 3600 Customer Service at (703) 306-5771, or e-mail CustomerService3600@uspto.gov.


Any inquiry concerning the merits of the examination of the application should be directed to Dean Tan Nguyen at telephone number (703) 308-2053. My work schedule is normally Monday through Friday from 7:00 am through 4:30 pm.

Should I be unavailable during my normal working hours, my supervisor John Weiss may be reached at (703) 308-2702. The FAX phone numbers for formal communications concerning this application are (703) 872-9306. Informal communications may be made, following a telephone call to the examiner, by an informal FAX number to be given.

Other possibly helpful telephone numbers are:

Allowed Files & Publication	(703) 305-8322
Assignment Branch	(703) 308-9287
Certificates of Correction	(703) 305-8309
Drawing Corrections/Draftsman	(703) 305-8404/ 8335
Fee Questions	(703) 305-5125
Intellectual Property Questions	(703) 305-8217
Petitions/Special Programs	(703) 305-9282
Terminal Disclaimers	(703) 305-8408
Information Help Line	1-800-786-9199

dtn
October 18, 2004


DEAN T. NGUYEN
PRIMARY EXAMINER